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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,843	08/24/2001	William B. Dress	UBAT:031US/JJB	1146
25094	7590	05/28/2003	EXAMINER	
GRAY, CARY, WARE & FREIDENRICH LLP 1221 SOUTH MOPAC EXPRESSWAY SUITE 400 AUSTIN, TX 78746-6875			TURNER, SAMUEL A	
		ART UNIT		PAPER NUMBER
		2877		

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/938,843	DRESS ET AL.
	Examiner	Art Unit
	Samuel A. Turner	2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

#### THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-9 and 11-20 is/are allowed.  
 6) Claim(s) 10 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
     If approved, corrected drawings are required in reply to this Office action.  
 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1.) Certified copies of the priority documents have been received.  
 2.) Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.  
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.  
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ .	6) <input type="checkbox"/> Other: ____ .

### Office Action

#### Rejections Under 35 U.S.C. § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to a generic electromagnetic waveform which occurs naturally.

#### Rejections Under 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. § 102(b) as being clearly anticipated by any electromagnetic waveform.

Claim 10 is a product-by-process claim, a product; the waveform produced by the process; the method of claim 1. As such the process does not limit the product claimed. The claim is limited to the structure of the waveform and as the claim includes no structure the waveform is anticipated by any electromagnetic waveform.

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### Reasons for Allowability

Claims 1-9, and 11-20 are allowed in view of the prior art of record.

The prior art of record fails to teach a probe method including downconverting a beam, converging two portions of the beam, interacting a portion of the beam with the sample, and combining the beam with the reference beam as found in claim 1.

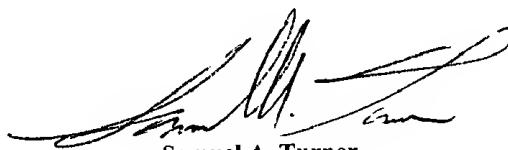
The prior art fails to teach a probe apparatus including the multi-refrингent device, a condenser, a probe beam, and the beam-splitter of claim 12.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel A. Turner those telephone number is (703) 308-4803. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font, can be reached on (703) 308-4881.

The fax phone number for this Group is (703) 308-7722. The faxing of papers related to this application must conform with the notice published in the Official Gazette, 1096 O.G. 30 (15 November 1989). The Group receptionist telephone number is (703) 308-0956.

Any inquiry of a technical nature regarding reissues, petitions, and terminal disclaimers should be directed to Ed Glick whose telephone number is (703) 308-4858, Hien Phan whose telephone number is (703) 308-7502, or Ed Westin whose telephone number is (703) 308-4823.

Any other inquiry of a technical nature, and all inquiries of a general nature including those relating to the status of this application or any patent term adjustment should be directed to TC2800 Customer Service Office whose telephone number is (703) 306-3329.



Samuel A. Turner  
Primary Examiner  
Art Unit 2877

SAT  
May 15, 2003